FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 850.

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, WADDILL CATCHINGS, JOHN FOSTER DULLES, WALTER E. SACHS, HENRY S. BOWERS, CLINTON M. FINNEY, JAMES F. FOGARTY, HERBERT C. FREEMAN, JOHN B. NIVEN, HENRY E. MENDES, FRANCIS J. CLOWES, VICTOR H. STEMPF, EDWIN H. WAGNER, SR., ROBERT C. BROWN, WILLIAM C. BECHERT, JACOB P. FRIEDMAN, ALBERT E. PARDEE, RALPH JONAS, LOUIS E. KILMARX, CHRISTIAN A. JOHNSON, DAVID G. McCORNACK, JOHN H. ECCLES, CLARENCE F. DILLON, OTTO A. PHILIPP and HUGH B. BAKER,

Petitioners,

—against—

CARL J. AUSTRIAN and ROBERT G. BUTCHER, as Trustees of Central States Electric Corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENTS' BRIEF.

CARL J. AUSTRIAN,
Attorney for Respondents.

ROBERT G. BUTCHER,
SAUL J. LANCE,
GEORGE H. SCHWARTZ,
ISADORE H. COHEN,
Of Counsel.

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statement of the Case	2
Statutes Involved	4
Summary of Argument	4
Argument	6
I. A. Section 2 of the Bankruptcy Act Confers Jurisdiction on the District Courts of This Cause of Action	6
B. The Relation of Section 2 to Section 23	16
II. Bankruptcy Act, Section 11b, as a Source of Jurisdiction	24
III. The Judicial Code as a Source of Jurisdiction	32
A. Respondents Are Officers of the United States	33
B. Specific Jurisdiction Is Conferred in Judicial Code, Section 24(19)	33
C. The Action Is One Arising Under the Laws of the United States	36
Conclusion	42
Appendix	43

TABLE OF CASES CITED:

PAGE

Aetna Life Insurance Company v. *Haworth*, 300 U. S. 227 (1937) 15n

Angel v. *Bullington*, —— U. S. ——, No. 31 this Term, Feb. 17, 1947, Slip Sheet, p. 8 24

Auten v. *United States National Bank*, 174 U. S. 125 (1899) 37n

Babbitt v. *Dutcher*, 216 U. S. 102, 6n, 7, 13, 13n, 14n, 16n, 17, 25, 26, 30n, 31n

Bardes v. *Hawarden Bank*, 178 U. S. 524, 6n, 7, 10, 11, 12, 13, 13n, 14n, 16n, 17, 18n

Beeler v. *Schumacher*, 71 F. (2d) 831 (C. C. A. 6, 1934) 38

Bryan v. *Bernheimer*, 181 U. S. 189 ..... 13n, 16n, 18n

Burbank v. *Bigelow*, 92 U. S. 179 (1875) 34n

Bush v. *Elliott*, 202 U. S. 477 (1906) 19n, 34n

Coal Company v. *Blatchford*, 78 U. S. 172 (1870) 19n

Collett v. *Adams*, 249 U. S. 545 (1919) 27, 28

Colorado Bank v. *Bedford*, 310 U. S. 41 (1940) 39n

Committee for Holders of Central States, etc. v. *Kent*, 143 Fed. (2) 684 ..... 2, 3

Continental Bank v. *Rock Island Ry.*, 294 U. S. 648 .. 21n

Dodge v. *Tulleys*, 144 U. S. 451 (1892) 19n

Dushane v. *Beall*, 161 U. S. 513 (1896) 38n

Elkus, In re, 216 U. S. 115 (1910) 31n

Exploration Co. v. *U. S.*, 247 U. S. 435 ..... 13n

Fyster v. *Gaff*, 91 U. S. 521 (1875) 12, 13

First National Bank v. *Title & Trust Co.*, 198 U. S. 280 (1905) 16n

Goodall v. *Tuttle*, 10 Fed. Cas. 579 (W. D. Wis., 1872), 6n, 7, 8, 13n

Gully v. *First National Bank*, 299 U. S. 109, 5, 38, 39, 39n, 40, 41

PAGE

Hall v. *Kincell*, 102 Fed. 301 (C. C. A. 9, 1900) 18n
Hammond, In re, 98 Fed. 845 (D. Mass., 1899) 16n
Hannis Distilling Co v. *Baltimore*, 216 U. S. 285 (1910) 40n
Holmberg v. *Armbrecht*, 327 U. S. 392 24
Hull v. *Burr*, 234 U. S. 712 (1914) 39n
Jaquith v. *Rowley*, 188 U. S. 620 (1903) 16n
Kelly v. *Gill*, 245 U. S. 116 (1917) 16n, 24n
Lathrop v. *Drake*, 91 U. S. 516 (1875).
7, 8, 9, 10, 11, 12, 13, 15, 16n, 25, 26, 31n
Lynch v. *Bronson*, 160 Fed. 139 (D. Conn., 1908) 6n
Marshall v. *Knox*, 16 Wall. 551 (1872) 12, 13
Martex Realization Corp. v. *Wolfson*, 145 Fed. (2) 360 (C. C. A. 2, 1944) 27
Munter v. *Weil Co.*, 261 U. S. 276 (1922) 21n
Muskrat v. *U. S.*, 219 U. S. 346 (1911) 15n
Phillips v. *United States*, 312 U. S. 246 (1941) 39
Prima Co., In re, 98 F. (2) 952 (C. C. A. 7, 1938), cert. den., 305 U. S. 658 ..... 22n
Pufahl v. *Estate of Parks*, 299 U. S. 217 (1936). 33n, 37n, 41
Rector v. *City Deposit Bank*, 200 U. S. 405 (1906) ... 38n
Robertson v. *Labor Board*, 268 U. S. 619 ..... 21n
Schumacher v. *Beeler*, 293 U. S. 367 (1934). 7, 14n, 16n, 24n, 38
Sherman v. *Bingham*, 7 Nat. Bank Reg. 490; Fed. Cas. 12762 (1872) 7, 8, 10, 11, 12, 13, 15n
Shoshone Mining Co. v. *Rutter*, 177 U. S. 505 41
Sievers, Matter of, 91 Fed. 366 (E. D. Mo., 1899). 18n, 19n, 34n
Smith v. *Mason*, 14 Wall. 419 (1871) 12, 13
Spencer v. *Duplan Silk Co.*, 191 U. S. 526 (1903) ... 34n
Standard Gas & Electric Co., Matter of, 139 Fed. (2) 149 (C. C. A. 3, 1943) 21n

PAGE

Standard Gas & Electric Co., 119 Fed. (2) 658 (C. C. A. 3, 1931) 22n

Taubel, etc., Co. v. *Fox*, 264 U. S. 426 (1924) 24n

Thomas v. *Winslow*, 11 Fed. Supp. 839 (W. D. N. Y., 1935) 21n

Thompson v. *Terminal Shares*, 104 F. (2) 1 (C. C. A. 8, 1939), cert. den., 308 U. S. 559 ..... 22n

Toledo Fence & Post Co. v. *Lyons*, 290 Fed. 637 (C. C. A. 6, 1923) 14n, 16n, 18n, 34n, 37, 38, 39n

U. S. v. *Ryan*, 284 U. S. 167 ..... 13n, 26n

Williams v. *Heard*, 140 U. S. 529 (1891) 38n

White v. *Ewing*, 159 U. S. 36 26

Whitney v. *Wenman*, 198 U. S. 539 (1905) 16n

Wood v. *Wilbert's Sons*, 226 U. S. 384 (1912) 17n

Woolridge v. *McKenna*, 8 Fed. 650 (C. C. W. D. Tenn.) (1881) 34n

OTHER AUTHORITIES CITED:

Act of February 5, 1903:
Section 8; 32 Stat. 797, 798 ..... 17n
Section 13; 32 Stat. 799 ..... 17n
Section 16; 32 Stat. 800 ..... 17n

Act of June 25, 1910, section 7; 36 Stat. 840 ..... 17n

Bankruptcy Act of 1867:
Section 1 ..... 6, 6n, 7, 8, 9, 10, 10n, 11, 12, 13, 16n, 25, 26, 36, 43
Section 2 ..... 7, 9, 9n, 10, 10n, 11, 12, 13

Bankruptcy Act of 1898, as amended:
Chapter X 2, 4, 5, 15, 16, 19, 20, 21, 22, 22n, 23, 23n, 24 25, 27, 27n, 29, 30n, 31, 33, 34, 35, 36
Section 1 ..... 29n, 30n, 31n, 32, 34
Section 2 ..... 4, 5, 6, 6n, 7, 13, 14, 14n, 15, 15n, 16, 16n, 17, 18n, 24, 26, 26n, 28, 31n, 43

PAGE

Section 11e 14, 15
Section 21(a) 30, 31
Section 23; 11 U. S. C. A. section 46,
4, 5, 14n, 15, 16, 16n, 17, 18, 18n, 19,
19n, 20, 21, 22, 33, 34n, 35, 36, 37, 44
Section 33 34
Section 44 34
Section 45 ..... 19n, 20n, 34
Section 47 34
Section 48 34
Section 50 34
Section 60 ..... 14, 15, 17, 23n
Section 67 ..... 14, 15, 17, 23n
Section 70 ..... 14, 15, 17, 23n
Section 77B 21, 21n, 22
Section 101 44
Section 102 ..... 5, 15, 33, 35, 36, 44, 45
Section 111 ..... 29, 45
Section 112 29
Section 114 ..... 29, 45
Section 115 ..... 4, 5, 24, 26, 27, 29, 29n, 30, 32, 45
Section 118 ..... 31, 32
Section 156 ..... 19n, 20n, 34
Section 167 ..... 2, 3, 22, 22n
Section 186 ..... 23n, 34
Section 187 ..... 23n, 34
Section 216 ..... 23n

Collier on Bankruptcy (11th Ed. 1917), p. 68 ..... 6n

Constitution of the United States:
Article 2, Section 2 34
Article 3, Section 2 ..... 15, 15n, 36, 37

Dobie, Federal Procedure, p. 193 ..... 19n

Frankfurter & Katz, Cases on Federal Jurisdiction,
p. 735 ..... 18n

PAGE

Hearings before Committee on the Judiciary, House of Representatives, 75th Congress, First Session, H. R. 6439 and H. R. 8046, pp. 162, *et seq.* 20n

H. Rep. 1409, 75th Cong., 1st Sess. (1937):
Page 4 ..... 30n
Page 5 ..... 30n
Page 35 14

Judicial Code, as amended by the Act of February 13, 1925:
Section 24 ..... 4, 5, 14n, 18n, 32, 33, 35, 36, 37, 38, 45
Section 28 39
Section 51; 28 U. S. C. A. section 112 ..... 21n
Section 52; 28 U. S. C. A. section 113 ..... 21n
Section 53; 28 U. S. C. A. section 114 ..... 21n
Section 240(a); 28 U. S. C. section 347(a) 1

Moore's Bankruptcy Manual, 1939, 494 ..... 6n, 24n

Report of Senate Committee on the Judiciary; Report #1916, 75th Congress, Third Session, pp. 21, 29 ..... 22n

Ross, Federal Jurisdiction in Suits by Trustees in Bankruptcy, 20 Iowa L. Rev. 565, 566, 567 (1935) 6n

Senate Report #388, Part I, 61st Congress, 2nd Session (1909-1910); Vol. 4, page 16 (Report on S 7031, "Revision of the Laws"). 35, 36, 36n

2 Collier on Bankruptcy (14th Ed.), section 23.12... 6n

6 Collier on Bankruptcy (14th Ed.), section 3.20.... 6n

18 Stat. 470, Ch. 137, section 1 ..... 18n

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 850.

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, WADDILL CATCHINGS, JOHN FOSTER DULLES, WALTER E. SACHS, HENRY S. BOWERS, CLINTON M. FINNEY, JAMES F. FOGARTY, HERBERT C. FREEMAN, JOHN B. NIVEN, HENRY E. MENDES, FRANCIS J. CLOWES, VICTOR H. STEMPF, EDWIN H. WAGNER, SR., ROBERT C. BROWN, WILLIAM C. BECHERT, JACOB P. FRIEDMAN, ALBERT E. PARDEE, RALPH JONAS, LOUIS E. KILMARX, CHRISTIAN A. JOHNSON, DAVID G. MCCONNACK, JOHN H. ECCLES, CLARENCE F. DILLON, OTTO A. PHILIPP and HUGH B. BAKER,
Petitioners,

—against—

CARL J. AUSTRIAN and ROBERT G. BUTCHER, as Trustees of Central States Electric Corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENTS' BRIEF.

Opinions Below.

The opinion of the United States District Court (R. 127) is reported in 67 Fed. Supp. 223. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 142) is reported in 159 Fed. (2) 67.

Jurisdiction.

The order and judgment of the Court of Appeals for the Second Circuit was filed December 10, 1946 (R. 149). The petition for a writ of certiorari was filed January 4,

1947 and was granted on February 10, 1947 (R. 151). The jurisdiction of this Court rests upon Judicial Code section 240(a), 28 U. S. C. section 347(a), as amended by the Act of February 13, 1925.

Question Presented.

The sole question involved is whether a Chapter X trustee, having discovered in the course of his investigation, pursuant to section 167 of the Bankruptcy Act, causes of action against the management of a debtor and affiliated interests, and having been specifically authorized by the Bankruptcy Court to bring suit thereon in a district court of the United States other than that in which the petition for reorganization was filed and the reorganization is pending, may bring such a plenary suit in that other district regardless of whether there is diversity of citizenship.

Statement of the Case.

Central States Electric Corporation,[1] a Virginia corporation, is a Debtor in reorganization proceedings in the District Court for the Eastern District of Virginia. Sometime in 1943, its former trustees reported to the Reorganization Court that numerous wrongs and frauds appeared to have been perpetrated against the estate of the Debtor by certain persons, firms and corporations. They recommended, however, that no suit be instituted to redress these frauds because, in their opinion, the statutes of limitation of the states where suit could be brought barred relief.

The Court of Appeals for the Fourth Circuit did not agree with these views (See *Committee for Holders of Central States, etc.* v. *Kent*, 143 Fed. (2) 684), because (at p. 686):

> "The great losses sustained by the corporation, the gross mismanagement shown, the clear abuse of power by corporate officers in contracts made for and with

[1] Referred to throughout this Brief as the "Debtor".

> the corporation, the recommendation of the governmental agency charged with the supervision of matters of this sort,—all of these called for an investigation of the most complete and thorough-going character, with opportunity to examine under oath those who had knowledge of the corporation's affairs and with institution of suits for recovery where probable liability had been shown, to the end that all of the processes of discovery provided by law might be fully used. . . ."

Respondents were then appointed trustees and conducted an investigation (under section 167 of the Bankruptcy Act) into the conduct of the former management and affiliated interests. That investigation disclosed that petitioners, as officers, directors and controlling stockholder, together with other conspiring parties, had looted the estate of the Debtor and had engaged in shocking conduct against the public security holders of the Debtor. Pursuant to the direction of the Reorganization Court, this action was begun in the District Court for the Southern District of New York by the filing of the complaint seeking restitution of upwards of $39,000,000.

Respondents have not answered the complaint. On October 1 and October 5, 1945—three months after the filing of the complaint—they moved for an order of dismissal on the ground that the Southern District Court of New York had no jurisdiction of the subject matter of the action and on the further ground that the transactions complained of were so stale as to be barred by the New York statute of limitations.

After considering the matter for almost seven months, the District Court rendered an opinion finding that it had no jurisdiction of the subject matter. It did not, therefore, reach the question as to the staleness of the claims. However, it stated that if it had found jurisdiction, it would have denied the motion to dismiss on the ground of limitations in view of the issues of fact presented by the complaint.

An appeal was promptly taken by respondents to the

Second Circuit Court of Appeals, which, on December 10, 1946, found that the Southern District Court of New York had jurisdiction of the subject matter of the action, and, accordingly, reversed the order and judgment of the District Court.

July 5, 1947, will be two years from the date when respondents filed their complaint in the District Court. As of today, the only progress in the litigation has been a determination by the Second Circuit Court of Appeals that the District Court had jurisdiction to entertain the suit—a conclusion which we think has been abundantly clear from the outset and which is the only issue presented on the present writ.

Statutes Involved.

The various statutes to which reference may be made will be found in the Appendix, *infra*, pp. 43 *et seq.*

Summary of Argument.

The Court of Appeals found jurisdiction in section 2(a)7 of the Bankruptcy Act, and reversed the District Court which had sustained the contention of the petitioners that such jurisdiction could be found only in section 23 of the Act, and that since section 23 has been declared inapplicable to Chapter X, the court had no jurisdiction at all.

We believe that the court below was correct in finding jurisdiction in section 2(a)7. We go further and argue that such jurisdiction also exists under section 115 of the Bankruptcy Act, conferring equity jurisdiction; under Judicial Code section 24(1), granting jurisdiction of suits arising under the laws of the United States; under Judicial Code section 24(19), granting jurisdiction of "matters and proceedings" in bankruptcy; and under Judicial Code section 24(1), granting jurisdiction of suits brought by officers of United States.

Petitioners urge that section 2 merely confers jurisdiction to administer the bankruptcy estate and does not contain a grant of jurisdiction to any district court

over ordinary civil actions. This argument rests on two grounds: a narrow interpretation of the language of section 2 ("proceedings") and on the assumption that section 23 is the sole source of plenary jurisdiction. We argue that section 2 contains a broad grant of jurisdiction to all the district courts over ordinary civil actions brought by trustees in bankruptcy; that section 23 is a limitation thereon; and that this limitation is removed, as respects Chapter X trustees, by section 102.

Insofar as section 115 of the Bankruptcy Act is concerned, petitioners deny that the equity jurisdiction there conferred runs to any district court other than to "the court" in which the petition for reorganization was filed. We believe this interpretation to be erroneous, and that the grant of jurisdiction in section 115 to "the court" is a grant to the Court of Bankruptcy—which means every district court of the United States.

As to the scope of the Judicial Code, petitioners deny any jurisdiction thereunder on the ground that this case does not depend on a construction of any federal law (*Gully* v. *First National Bank*, 299 U. S. 109). The answer is that this case does arise under the laws of the United States, and that the *Gully* case does not apply where, as here, Congress has constitutionally conferred jurisdiction on the district courts of actions by trustees in bankruptcy.

Finally, we urge that Chapter X trustees are officers of the United States and as such are entitled to bring this suit. We find no support for the argument of petitioners which would limit the officers described in Judicial Code section 24(1) to officers appointed only by the Executive Branch of the Government.

ARGUMENT.

I.

A. Section 2 of the Bankruptcy Act Confers Jurisdiction on the District Courts of This Cause of Action.

Section 2(a) of the Bankruptcy Act gives the district courts "such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, * * * to— * * * (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, * * *."

By its terms this section is very broad and includes a grant of plenary jurisdiction to all the district courts. The lower court, as well as other authorities, agree with our view.[2] Further support for this conclusion will also be found in decisions of this Court and lower federal courts construing section 1 of the Bankruptcy Act of 1867, which is practically identical with section 2 of the Bankruptcy Act of 1898.[3] In these cases it was held that section 1 of the Act of 1867 contained a grant to all the district courts of the United States (and not merely the district court in which the bankruptcy proceeding was pending) of plenary jurisdiction of suits to which a bank-

[2] See, *e. g.*, *6 Collier on Bankruptcy* (14th Ed.), section 3.20, *2 id.*, section 23.12; *Moore's Bankruptcy Manual*, 1939, 494; *Collier on Bankruptcy* (11th Ed. 1917), p. 68 ("* * * the power conferred by this subdivision appears to be plenary"); *Ross, Federal Jurisdiction in Suits by Trustees in Bankruptcy*, 20 Iowa L. Rev. 565, 566, 567 (1935); *Lynch* v. *Bronson*, 160 Fed. 139, 140 (D. Conn., 1908); *cf. Goodall* v. *Tuttle*, 10 Fed. Cas. 579, 580, 582 (W. D. Wis., 1872).

[3] The identity of the two Acts has been recognized by this Court in *Babbitt* v. *Dutcher*, 216 U. S. 102 and in *Barnes* v. *Hanvarden Bank*, 178 U. S. 524, 534. It will be recalled that Mr. Chief Justice Fuller, speaking for a unanimous Bench, has said that the jurisdiction granted in section 2 (of the Act of 1898) was as broad as that granted in section 1 of the Act of 1867. (*Babbitt* v. *Dutcher*, 216 U. S. 102, 107.)

ruptcy trustee was a party [*Lathrop* v. *Drake*, 91 U. S. 516 (1875); *Shearman* v. *Bingham*, 7 Nat. Bank Reg. 490; Fed. Cas. 12762 (1872); *Goodall* v. *Tuttle*, 10 Fed. Cas. 579 (W. D. Wis. 1872)][4]. It follows, therefore, that section 2 of the present Act contains a similar grant of plenary jurisdiction. This Court has already said so [*Babbitt* v. *Dutcher*, 216 U. S. 102, 111 (1909)][5].

Petitioners seek to escape from the thrust of this logic by contending that the jurisdiction of the district courts under the Act of 1867 was found not in section 1 but in section 2 of that Act—a section which was not carried over into the Act of 1898—and which provided only that the circuit courts should have concurrent jurisdiction with the district courts of all suits at law or in equity brought by an assignee in bankruptcy. This argument is rested on a dictum in *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 532, later repeated in *Schumacher* v. *Beeler*, 293 U. S. 367, 372, a dictum which will not withstand the scrutiny of history or analysis of the authorities claimed for its support. To this history and analysis we now turn for the proof that petitioners' argument is unfounded and that the jurisdiction of the district courts under the Act of 1867 was rested in section 1 of that Act and not in section 2.

[4] There, after reviewing the acts of 1841, 1867, and the cases arising thereunder, it was said: "* * * On the authority of these decisions it must be and is conceded that under the bankruptcy acts of 1841 and 1867 ancillary jurisdiction, *both in summary proceedings and in plenary suits, existed in all District Courts* within their respective districts; and the question really is whether the provisions of the act of 1898 are to the contrary, or, * * * show an intention on the part of Congress to restrict such jurisdiction so as to cut off the inferences drawn from the language of the earlier acts.

"But neither the act of 1867, nor the act of 1898, expressly confers or expressly negatives ancillary jurisdiction in courts other than the court of adjudication * * *.

"But the general jurisdiction was not restricted by those provisions [*i. e.*, §§ 23a and b, 60(b), 67(e)], though they operated to mitigate the rigor of the rule laid down in the *Bardes* case. * * *.

"There is no decision of this court adverse to the ancillary jurisdiction of the District Courts as asked to be exercised in this case. * * *" (Emphasis ours.)

Prior to the date of decision in *Lathrop* v. *Drake*, 91 U. S. 516, it had been held by the lower federal courts that under section 1 of the Bankruptcy Act of 1867 all the district courts of the United States had jurisdiction of suits to which a trustee in bankruptcy was a party, without regard to diversity or amount in controversy. This jurisdiction was held to extend to every district court and was not limited to the district court in which the original petition in bankruptcy had been filed. [*Shearman* v. *Bingham*, 7 Nat. Bank Reg. 490; Fed. Cas. 12762 (1872); *Goodall* v. *Tuttle*, 10 Fed. Cas. 579 (W. D. Wis. 1872).]

In *Shearman* v. *Bingham*, *supra*, plaintiff, an assignee in bankruptcy, sued in a district court other than the one wherein the proceeding in bankruptcy was pending. The suit was dismissed for lack of jurisdiction. Mr. Justice Clifford, sitting on circuit, reversed, and held that section 1 of the Act of 1867 granted jurisdiction to every district court and not merely to the district court in which the petition had been filed.[3]

In *Goodall* v. *Tuttle*, *supra*, the assignee in bankruptcy, appointed in proceedings pending in one district, sued in another to collect a debt due to the bankrupt. A plea of the defendant to the jurisdiction was overruled because

[3] The Court said (at p. 492, *et seq.*): "No such limitation however is found in the clause of the *first section* conferring jurisdiction upon the districts courts, as courts of bankruptcy. * * * On the contrary, the same section provides that the jurisdiction conferred, that is, the jurisdiction of the several district courts, shall extend * * * to the collection of all the assets of the bankrupt; * * *." (at p. 493): "* * * Unless the assignee can collect what is due to the bankrupt, he can never perform the duty assigned to him as the representative of the bankrupt, and the *first section* of the act expressly provides, that the jurisdiction of the district courts shall extend to the collection of all the assets of the bankrupt and to all acts, matters and things to be done under and in virtue of the bankruptcy. Nothing of greater importance is required to be done under and in virtue of the bankruptcy than the collection of the assets belonging to the estate of the bankrupt. Bankrupts, as all experience shows, have debts due them in districts other than the one where the proceedings against them are instituted. * * *". (Emphasis ours.)

the court found jurisdiction in section 1 of the Act of 1867.[6]

In *Lathrop* v. *Drake* there was presented to this Court the question whether under the Bankruptcy Act of 1867 an assignee in bankruptcy "without regard to the citizenship of the parties, could maintain a suit for the recovery of assets in a circuit court of the United States in any district other than that in which the decree of bankruptcy was made." The Court noted that the jurisdiction granted to the circuit courts[7] in section 2 was concurrent with the jurisdiction granted to the district courts in section 1. If, therefore, the district courts had jurisdiction of a

[6] The court said at page 580: "The second section does not profess or attempt to confer or regulate the jurisdiction of the district courts. That relates exclusively to the Circuit Court, but it may with propriety be said to assume the existence of this jurisdiction in the district courts. That section clothes the Circuit Court with concurrent jurisdiction with the district court in certain (not all) cases arising under the Act, but not of the character of this case, so it is not necessary to define or discuss its extent or meaning. I say by that section, Congress assumed the jurisdiction of the district court in all cases and that it was conferred by section 1, for if it is not found in that it does not exist. And in that assumption there is a very clear legislative construction of the extent and meaning of section 1." (at p. 582): "* * * The act further confers the power upon the district courts to collect all the assets of the bankrupt, and to do all other acts necessary to be done in virtue of the bankruptcy. This by implication confers the authority upon the district courts to entertain jurisdiction of suits in the name of the assignee against third persons, either at law or in equity, for the collection of the debts and property of the bankrupt, and as such jurisdiction is not expressly limited to the district courts where the proceedings are pending, and as no reason exists for such limitations, the courts are not warranted in restricting its exercise to such district. I have not undertaken to define with accuracy the character or extent of the jurisdiction of the circuit courts under the second section as I do not see that that section sheds any light upon the jurisdiction of the district courts as conferred in section 1."

[7] Section 2 of the Act of 1867, provided:

"* * * said circuit courts shall also have concurrent jurisdiction with the district courts of the same district of all suits at law or in equity * * * brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property, or rights of property, of said bankrupt, transferable to or vested in such assignee."

plenary suit *in personam* brought by a trustee in a district court other than that in which the bankruptcy proceeding was pending, then by the express terms of section 2 the circuit courts would have the same jurisdiction.[8]

The Court accordingly examined the jurisdiction granted to the district courts in section 1 and found that general jurisdiction was granted in section 1 of the Act of 1867 to the district courts of all cases to which the trustee was a party.[9]

Indeed, a review of the participation by Justices Clifford, Bradley and Miller in the *Lathrop* case will establish the correctness of our interpretation of the *Lathrop* decision and the fact that it was misread by Mr. Justice Gray in the *Bardes* case. Mr. Justice Clifford was a member of the Bench when the *Lathrop* case was decided. He had already decided *Shearman* v. *Bingham*,

[8] The very form which the reasoning took should eliminate any doubt as to the source of the district courts' jurisdiction under the 1867 Act. If, as petitioners contend, that jurisdiction was to be found only in the second section, then it was unnecessary for Mr. Justice Bradley to inquire into the jurisdiction conferred in section 1,—note the terms of section 2, above quoted: "* * * (the) circuit courts shall also have concurrent jurisdiction with the district courts * * * of all suits." If this was the source of jurisdiction, why did the Court deem it necessary to refer to section 1? Clearly, because 2 did not grant jurisdiction to the district courts; it carried over to the circuit courts a jurisdiction granted in 1; section 1 was the grant of jurisdiction to the district courts; section 2 gave the circuit courts an equivalent, *concurrent* jurisdiction.

[9] The court said (at p. 516): "* * * But the enacting clauses which confer this jurisdiction [*i. e.*, on the circuit courts] make such direct reference to the jurisdiction of the District Court, that it is necessary first to examine the latter jurisdiction. Of this there are two distinct classes: * * * secondly, jurisdiction, as an ordinary court, of suits at law or in equity brought by or against the assignee in reference to alleged property of the bankrupt, or to claims alleged to be due from or to him. The language conferring this jurisdiction [*i. e.*, the language of section 1] of the district courts is very broad and general. It is, that they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy. * * * Their jurisdiction * * * extends to all matters and proceedings in bank-

It is hardly believable that three years after his decision in the *Shearman* case (placing the jurisdiction of the district courts of ordinary civil actions squarely under section 1 of the Act of 1867 and not under section 2 of that Act), he would have concurred in the decision of *Lathrop* v. *Drake* if that decision did not reach the same result. Mr. Justice Bradley wrote the opinion in the *Lathrop* case, and quoted with approval *Shearman* v. *Bingham* and expressly adverted to the fact that it had been written by Mr. Justice Clifford. It is even more inconceivable that Mr. Justice Bradley would have cited the *Shearman* case as supporting authority unless he was deciding that section 1 of the Act of 1867, and not section 2 of that Act, was the source of jurisdiction of the district courts for ordinary civil actions brought by trustees in bankruptcy.

Finally, an examination of the cases claimed in support will further show the error of the *Bardes* dictum. Mr. Justice Gray, in the course of his opinion in *Bardes*,

---

ruptcy without limit. When the act says that they shall have jurisdiction in their respective districts, it means that the jurisdiction is to be exercised in their respective districts. Each court within its own district may exercise the powers conferred; but those powers extend to all matters of bankruptcy, without limitation. * * * the exclusion of other district courts from jurisdiction over these proceedings does not prevent them from exercising jurisdiction in matters growing out of or connected with that identical bankruptcy, so far as it does not trench upon or conflict with the jurisdiction of the court in which the case is pending. Proceedings ancillary to and in aid of the proceedings in bankruptcy may be necessary in other districts where the principal court cannot exercise jurisdiction; and it may be necessary for the assignee to institute suits in other districts for the recovery of assets of the bankrupt. That the courts of such other districts may exercise jurisdiction in such cases would seem to be the necessary result of the general jurisdiction conferred upon them, and is in harmony with the scope and design of the act. * * * The question has been quite fully and satisfactorily discussed by a member of this court in the first circuit, in the case of *Shearman* v. *Bingham*, 7 Bank. Reg. 490; and we concur in the opinion there expressed, that the several district courts have jurisdiction of suits brought by assignees appointed by other district courts in cases of bankruptcy." (Bracketed insertions ours.)

cited *Smith* v. *Mason*, 14 Wall. 419 (1871) (*written by Mr. Justice Clifford*); *Marshall* v. *Knox*, 16 Wall. 551 (1872) (*written by Mr. Justice Bradley*); and *Eyster* v. *Gaff*, 91 U. S. 521 (1875) (*written by Mr. Justice Miller*), as authority for the proposition that a trustee in bankruptcy could assert title to property conveyed by the bankrupt "before the bankruptcy * * * only * * * by a plenary suit * * * under the second section of the act of 1867; * * *" (178 U. S. 524, at 532.) But Mr. Justice Gray's error will become readily apparent when these cases are examined, because they are authority only for the proposition that disputed title could be determined in plenary suits and not in summary proceedings. They are not authority for the proposition that jurisdiction was in section 2 of the Act of 1867 since those cases did not concern themselves with that issue at all.

Indeed, *Smith* v. *Mason* was decided before *Shearman* v. *Bingham* and the opinions in both cases were written by Mr. Justice Clifford. It will be recalled that Mr. Justice Clifford, in *Shearman* v. *Bingham*, squarely held that the jurisdiction of the district courts of ordinary civil actions brought by trustees in bankruptcy rested in section 1 of the Bankruptcy Act of 1867. The opinion in *Marshall* v. *Knox* was written in 1872 by Mr. Justice Bradley, three years before he wrote the opinion in *Lathrop* v. *Drake*, and it will be recalled that there he placed the jurisdiction of district courts in section 1 of the Act of 1867 and cited with approval Mr. Justice Clifford's decision in *Shearman* v. *Bingham*. Finally, *Eyster* v. *Gaff* was decided by the same Bench which ruled on *Lathrop* v. *Drake*, and the opinion in *Eyster* v. *Gaff* is reported in 91 U. S. immediately following the opinion in *Lathrop* v. *Drake*. We do not believe that Mr. Justice Miller would have concurred (in the *Lathrop* case) in placing the jurisdiction of the district courts in section 1 and then would have immediately decided the exact opposite, *sub silentio*, in *Eyster* v. *Gaff*. Indeed, bearing in mind the fact that Mr. Justice Bradley and Mr. Justice Clifford participated in all these opinions,

it is most improbable that they could have written and concurred in the opinions in *Lathrop* v. *Drake* and *Shearman* v. *Bingham*, which placed the jurisdiction of the district courts in section 1 of the Act of 1867 and then have decided the exact opposite (as the *Bardes* dictum says they did) in *Eysler* v. *Gaff*, *Smith* v. *Mason* and *Marshall* v. *Knox*.

Indisputably the *Bardes* dictum was a misreading of the opinion in *Lathrop*.[10] The proper reading of *Lathrop* v. *Drake* is that the jurisdiction of the district courts rests in section 1 of the Act of 1867 and not in section 2 of that Act. We are not alone in our interpretation of the opinion in the *Lathrop* case. Chief Justice Fuller, in *Babbitt* v. *Dutcher*, which came after *Bardes*, read the *Lathrop* case as we read it.[11]

Since section 2 of the Act of 1898 is identical with section 1 of the Act of 1867, it must follow that section 2 contains a full grant of plenary jurisdiction to all the district courts of the United States over ordinary civil actions brought by trustees in bankruptcy. When Congress passed the Bankruptcy Act of 1898, the rule in *Lathrop* v. *Drake* was the established doctrine of this Court as to the scope of jurisdiction contained in section 1 of the Act of 1867. Obviously, Congress must be deemed to have enacted section 2 of the 1898 Act, having in mind the interpretation placed on section 1 of the 1867 Act by this Court in *Lathrop* v. *Drake*,[12] and "Congress must be considered to have adopted" the interpretation placed on section 1 of the 1867 Act by this, and the lower federal courts when it re-enacted that section as section 2 of the Act of 1898.[13]

---

[10] Mr. Justice Gray himself has admitted there is other error in the *Bardes* case (see *Regan* v. *Bernheimer*, 181 U. S. 189, 197).

[11] The Chief Justice also relied on *Shearman* v. *Bingham* and *Goodall* v. *Tuttle* (see 216 U. S. 102, 108, 111).

[12] *Cf. Exploration Co.* v. *U. S.*, 247 U. S. 435, 449.

[13] *Cf. U. S.* v. *Ryan*, 284 U. S. 167, 175. Petitioners' suggestion (Brief, p. 13) that the *Bardes* dictum was "accepted" by Congress *sub silentio* in the 1938 revision of the Bankruptcy Act

The argument of petitioners that section 2 of the 1898 Act is not a grant of jurisdiction of plenary suits rests on a construction of the word "proceedings" in section 2. It is urged that irrespective of the context in which the term appears in the Act it applies only to the summary steps in a bankruptcy administration. This is an unwarranted attempt to define the term "proceedings" restrictively. Analysis of various portions of the Bankruptcy Act will show that the term "proceedings" is used interchangeably with "suit" or "action." Thus, section 11e of the Bankruptcy Act authorizes trustees to "institute proceedings in behalf of the estate upon any claim." And in another connection, section 11e refers to "any proceedings, judicial or otherwise." Obviously, the term "proceedings" is used in section 11e as including a suit or action.

So also sections 60b, 67e and 70e(3) of the Act,—dealing with preferences and fraudulent conveyances,—confer jurisdiction over certain "plenary proceedings." Plainly, the term "proceedings" in these sections refers to and includes suits or actions. Indeed, in discussing the provisions of section 70e(3), the Congressional Committee used both terms "action" and "proceeding" interchangeably (H. Rep. 1409, 75th Cong., 1st Sess., p. 35), and the bill described the plenary actions thereunder as "proceedings".

As a matter of fact section 2 also provides, in subdivision 7, for the determination of "controversies" in relation to the collection of the estates of bankrupts. That "controversies" in this context includes plenary suits is clear from the fact that the same word ("controversies")

---

is manifestly erroneous, especially when viewed in the light of the opinions expressed in *Babbitt* v. *Dutcher*, 216 U. S. 102 and *Schumacher* v. *Beeler*, 293 U. S. 367. *Babbitt* v. *Dutcher* clearly interprets section 2 of the 1898 Act as a grant of general jurisdiction over ordinary civil actions, and *Schumacher* v. *Beeler* approved the "view" of *Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, that actions by trustees in bankruptcy fell within the jurisdiction granted in Judicial Code, section 24(1). Besides, *Barides* did not "interpret" section 2; it was wholly concerned with the restrictive effects of section 23.

is so used in the Constitution[11] and in section 23—which concededly deals with plenary suits.

A consideration of section 102 also shows the fallacy of petitioners' argument. If "proceedings" in section 2 is limited entirely to the summary steps in the administration of a reorganization, then it follows that a Chapter X trustee has no power to institute a suit or action. However, section 102 incorporate Chapters I—VII of the Bankruptcy Act into reorganization proceedings. By virtue of this incorporation, it is clearly contemplated that a Chapter X trustee will institute suits or actions to set aside preferences and fraudulent transfers as provided in section 60, 67 and 70 of the Act. Indeed, section 60 (in subdivision a) and section 67 in subdivisions a(1), a(2), b, c, d(2) and d(3) directly refer to actions by a Chapter X trustee to avoid such fraudulent preferences and transfers.

Petitioners' narrow conception of the scope of the word "proceedings" has also led them into error in their views on jury trials (Brief, pp. 13, 14) and on the "exclusiveness" of bankruptcy proceedings (Brief, p. 14 *et seq.*; 26 *et seq.*). The right to a trial by jury is not, of course, foreclosed because a plenary suit may be authorized to be brought in the district courts by a section which uses the word "proceedings" in its grant of jurisdiction; it might as well be argued that all suits referred to in, *e. g.*, section 11(c), are to be tried to the court without a jury because that section, in dealing with plenary suits talks of "proceedings". Likewise, while the administration of bankrupt estates is exclusively a federal matter, that does not mean that suits growing out of such estates may not be tried in all courts, subject to the vicissitudes of local jurisdiction (cf. *Lathrop* v. *Drake*, 91 U. S. 516, 518).[11a]

[11] *Cf. Constitution, Art. 3, Sec. 2*, wherein the word "controversies" is likewise used as including plenary suits. *Muskrat* v. *U. S.*, 219 U. S. 346, 356 (1911); *Aetna Life Insurance Company* v. *Haworth*, 300 U. S. 227, 239 (1937).

[11a] Petitioners now seek to escape our rebuttal as to the scope of the word "proceedings" by arguing that the grant in section 2 of the 1898 Act is limited to "bankruptcy proceedings", or, as

B. The Relation of Section 2 to Section 23.

We come now to the relation of sections 2 and 23, and the effect of the removal of section 23 from Chapter X proceedings. Section 2 is stated as a grant of jurisdiction to the district courts "except as herein otherwise provided." This Court has heretofore declared that this exception refers to section 23,[15] which it has also variously characterized as a limitation[16] on section 2, and as a prohibition[17] against the exercise of jurisdiction granted in section 2.[18]

Clearly, section 23 deals with plenary jurisdiction and was enacted as a restriction on the jurisdiction contained in the Judicial Code and in section 2 of the Bankruptcy Act.[19] Since section 23 is the exception referred to in section 2[1] and since section 23 concededly deals with plenary jurisdiction, it is clear that section 2 must likewise deal with plenary jurisdiction, because a section cannot be stated as an exception to another section unless that section deals with the same subject matter. Stated an-

---

revised in 1938, to "proceedings under this Act". (Brief, pp. 8, 9, 10, *et seq.*) However, section 1 of the 1867 Act (see Appendix), like section 2 of the original 1898 Act, granted jurisdiction in "proceedings in bankruptcy". This did not deter the Court in *Lathrop* v. *Drake*, 91 U. S. 516 and *Babbitt* v. *Dutcher*, 216 U. S. 102, from viewing that section as a grant of plenary jurisdiction over ordinary civil actions.

[15] *Bryan* v. *Bernheimer*, 181 U. S. 188, 194 (1901); *First Nat. Bank* v. *Title & Trust Co.*, 198 U. S. 280, 289 (1905); *Whitney* v. *Wenman*, 198 U. S. 539, 549, 550 (1905); *Kelly* v. *Gill*, 245 U. S. 116, 119 (1917).

[16] See, *e. g.*, *Whitney* v. *Wenman*, *supra*, n. 15.

[17] *Jaquith* v. *Rowley*, 188 U. S. 620, 623 (1903); *Kelly* v. *Gill*, *supra*, n. 15.

[18] *Cf. Bardes* v. *Hawarden Bank*, 178 U. S. 524 (1899); and *Schumacher* v. *Beeler*, 293 U. S. 367, 374 (1934) where the court referred to section 23 as "in effect" a "grant" but, as noted by the court below, at a time when sections 2 and 23 were both involved in the issue for decision.

[19] An examination of the genesis of the Act of 1898 will establish the fact that section 23 was one of the compromises which the proponents of the legislation used to win support for their efforts. [*Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, 645; *In re Hammond*, 98 Fed. 845, 846 (D. Mass., 1899).]

other way, if section 2 did not deal with plenary jurisdiction, section 23 which does deal with plenary jurisdiction could not have been stated as an exception to 2.

Referring back to the years immediately following the enactment of the Bankruptcy Act, we find that shortly after the *Bardes* decision Congress attempted to soften the rigor of section 23 and amended sections 60(b), 67(e) and 70(e) to grant to the federal district courts jurisdiction of actions to set aside preferences and fraudulent transfers. *Babbitt* v. *Dutcher*, 216 U. S. 102, 113.[20] At the same time, Congress excepted from the scope of section 23 the actions specified in sections 60(b) and 67(e)[21] but failed to include section 70(e) as one of the excepted sections. This Court held[22] that an action under section 70(e) could not be brought in a federal court even though Congress had granted to the district court jurisdiction of such suits in section 70(e) itself. The reason was simply this: section 23 prevented the exercise of the jurisdiction expressly conferred on the district courts in section 70(e). Thereafter, Congress amended section 23 to include,[23] as one of the stated exceptions from its embrace, the actions specified in section 70(e).

This history persuades us that section 23 is not a grant of jurisdiction. If it were, then the subsequent grant in section 70(e) should have been effective. Congress can grant jurisdiction in one section (assume it to be section 23) and subsequently grant an additional jurisdiction in section 70(e). If both sections 23 and 70(e) are grants of jurisdiction, it cannot reasonably be argued that the prior grant in section 23 prevented the second grant in section 70(e) from becoming effective. Obviously, if the second grant is held to be sterilized by the terms of section

---

[20] Act of Feb. 5, 1903, sections 13, 16; 32 Stat. 799, 800.

[21] Act of Feb. 5, 1903, section [illegible]; 32 Stat. 797, 798.

[22] *Wood* v. *Wilbert's Sons*, 225 U. S. 384 (1912).

[23] Act of June 25, 1910, section 7; 36 Stat. 840.

23, then we must infer that section 23 was not a grant, but a limitation on the jurisdiction elsewhere granted.[24]

With the removal of section 23, any jurisdiction to entertain plenary suits, wherever granted, whether in the Bankruptcy Act or in the Judicial Code, becomes effective. This reasoning is consistent with the ordinary rules of statutory construction, agrees with history,[25] and gives content to and renders sensible the act of Congress in removing section 23.

---

[24] Note the terms in which Mr. Justice Gray answered the questions at the end of his opinion in *Bardes* v. *Hawarden Bank*: "The provisions of the second clause of section 23 * * * control and limit the jurisdiction of all courts, including the several District Courts * * * over suits brought by trustees in bankruptcy to recover or collect debts due from third parties * * *" (178 U. S. at 539). The form in which Mr. Justice Gray cast his reasoning (that section 23 was a limitation on section 2—*vide* his subsequent remarks as to this in *Bryan* v. *Bernheimer*, 181 U. S. 188) assumes an added significance when viewed against the diversity of views then prevalent in the lower federal courts. In these courts the cases fell into three patterns: (a) that section 23 was the sole grant of plenary jurisdiction; (b) that 23(b) merely applied to the circuit (not the district) courts; and (c) that section 23 was a limitation on section 2 as to all suits by a trustee. (*Cf. Hall* v. *Kincell*, 102 Fed. 391 (C. C. A. 9, 1900, for a review of these lines of authorities).) That Mr. Justice Gray did not accept the first view—the one now again proffered by petitioners—is revealed in the cast of his opinion.

[25] The jurisdiction conferred in the Bankruptcy Act, to be properly understood, must be viewed against the foil of a developing federal jurisdiction. Although the Constitution authorized Congress to vest in the federal courts jurisdiction to entertain suits "arising under the laws of the United States" it was not until 1875 that such jurisdiction was granted by Congress to the federal courts. (18 Stat. 470, Ch. 137, section 1; see, *Frankfurter & Katz, Cases on Federal Jurisdiction, p. 735.*) When the Act of 1898 was being considered, therefore, it was quite obvious that, but for a restriction imposed in the Bankruptcy Act, a federal bankruptcy trustee could sue in the federal courts under what is now section 24(1) of the Judicial Code. [*Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, 644 (C. C. A. 6th, 1923).] Section 23 was a deliberate legislative restriction of that source of jurisdiction. This is indicated by the courts that wrote in connection with the problem in and shortly after the passage of the 1898 Act. For example, Judge Adams said in *Matter of Sievers*, 91 Fed. 366, 372, in 1899, that the question of the jurisdiction conferred in the Bankruptcy Act on the federal courts should be

But, if we adopt petitioners' view,[26] we must conclude that the sole grant of plenary jurisdiction to the district courts is in section 23, and that the removal of section 23 has the result of denying to a Chapter X trustee even the "consent" jurisdiction which was saved to ordinary trustees by section 23. This would mean that Congress intended in Chapter X to confer a more limited jurisdiction than it had granted to ordinary trustees in the first seven chapters of the Bankruptcy Act.

If petitioners are correct, it would mean that Congress intended to restrict a Chapter X trustee to the federal jurisdiction rested on diversity of citizenship, with this additional complication: under section 23 the citizenship of the bankrupt would provide a fixed test for the trustee's citizenship. But with the removal of section 23, the trustee's own citizenship[27] (and not the bankrupt's) would be the guide in testing the existence of diversity.[28]

---

considered in the light of the federal question jurisdiction conferred in the Judicial Code. He pointed out that "according to well-settled authority, to which reference need not here be made, a federal question arises in any case * * * where the plaintiff holds an office * * * created by an act of Congress. * * * In the light of the interpretation given to the [statutes conferring jurisdiction in cases arising under the laws of the United States] it seems to me that the legislative intent involved in section 23 * * * is clear. * * * In other words, section 23, when properly construed, seems to me to mean that so much of the acts * * * as confers jurisdiction * * * of a suit in favor of an officer holding title under a law of the United States, is inoperative with respect to the officer known as a trustee under the bankrupt act. * * *" Mr. Justice Day writing for this Court in *Bush* v. *Elliott*, 202 U. S. 477 (1906) likewise said (at p. 482), "The effect of [section 23] * * * is to prevent the jurisdiction of the [federal] court from attaching, because of the appointment of a trustee in bankruptcy. * * *"

[26] "It was * * * not to enlarge the jurisdiction of the federal courts that section 23 was specifically designated as one of the sections of the Bankruptcy Act not incorporated in Chapter X" (Petitioners' Brief for certiorari, p. 16; also, Main Brief, p. 25).

[27] *Cf. Dodge* v. *Tulleys*, 144 U. S. 451, 455, 456 (1892); *Coal Company* v. *Blatchford*, 78 U. S. 172, 175 (1870); *Dobie, Federal Procedure*, p. 193.

[28] The implication of this is that a reorganization court located in California and desiring to sue malefactors resident in that state could appoint a non-resident trustee (*cf.* Bankruptcy Act,

Thus this view implies that Congress not only restricted the jurisdiction as to Chapter X trustees without any readily understandable basis for such action, but at the same time left the reorganization court in the difficult position of being required to make its choice of trustees depend upon the residence of the parties.[29] Moreover, defendants to be sued in connection with matters arising out of a reorganization might live in several states, and on petitioners' theory different trustees would be required to prosecute such actions in the federal courts against the various defendants. We do not believe that this could have been desired by Congress.

A short review of the history of the development of Chapter X will prove that the intent of Congress in removing section 23 was to enlarge, and not to restrict, the Chapter X trustee's choice of forum. Chapter X was the last step in a legislative history which had its origins in a profound dissatisfaction with the workings of equity receiverships.[30] Chapter X was substantially a revision

section 156 with section 45), so that the requisites of diversity, process and venue would be satisfied and the suit could be brought in a California federal district court. On the other hand, a Virginia reorganization court confronted with malefactors resident in the New York district and desiring to appoint a trustee conversant with New York procedures would not be able to appoint a New York trustee. It would be limited as to its choice of trustee, in order to satisfy the requirements of diversity of citizenship, venue and process, if it desired to prosecute the malefactors in a New York federal district court.

[29] Section 156 permits this, for the requirements as to residence, imposed on ordinary trustees in bankruptcy by section 45, are removed. We believe that the removal was not intended to permit jockeying to fulfill diversity requirements for suits in the federal courts, but was the direct result of the nationwide scope of the corporate businesses which, it was known, would come to the Bankruptcy Court for relief. The national emphasis is indicated, in this view, by the removal of residence requirements, as to trustees.

[30] See the statement before the House Committee on the Judiciary by Commissioner (now Mr. Justice) Douglas (Hearings before Committee on the Judiciary, House of Representatives, 75th Congress, First Session, H. R. 6439 and H. R. 8046, pp. 162, *et seq.*).

of section 77B which immediately preceded it in point of time.

When Congress enacted section 77B, it left section 23 applicable thereto.[31] If petitioners' view is correct, it must follow that a broader jurisdiction was conferred by Congress on a 77B trustee than on a Chapter X trustee. It will be recalled that section 77B (as well as Chapter X) conferred on the reorganization court jurisdiction of the debtor and its property "wherever located."[32] After the enactment of 77B, the Bar divided on the interpretation and meaning of this clause. It was argued that this was a grant of nationwide jurisdiction[33] which overrode all the statutes as to venue[34] and extent of process[35] in the Judicial Code. A contrary view held that this clause was merely a statement of the extent of the reorganization court's administrative jurisdiction and had nothing to do with its *in personam* jurisdiction or the extent of its process. The clash of these views resulted in cases where trustees instituted actions in the reorganization court and named as defendants persons as to whom there was no diversity of citizenship, and persons who lived outside of the district as to whom there was diversity. It was finally held that section 23 (which Congress had continued on into section 77B) controlled, and that the clause giving the reorganization court jurisdiction of the debtor and its property "wherever located" did not broaden the *in personam* jurisdiction of the Court in

---

[31] See section 77B(k).

[32] Section 77B(a).

[33] This was the holding by Rippey, *J.*, in *Thomas* v. *Winslow*, 11 Fed. Supp. 839 (W. D. N. Y., 1935).

[34] Judicial Code, sections 51, 52, 53; 28 U. S. C. A. sections 112, 113, 114.

[35] Judicial Code, sections 51, 52, 53; 28 U. S. C. A. sections 112, 113, 114; *Munter* v. *Weil Co.*, 261 U. S. 276 (1922); *cf. Robertson* v. *Labor Board*, 268 U. S. 619, 622; *see Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 683; *Matter of Standard Gas & Electric Co.*, 139 Fed. (2) 149 (C. C. A. 3rd, 1943).

plenary suits.[36] Dissatisfaction with this condition was expressed to Congress[37] when it was considering revision of section 77B, with the result that when Chapter X was enacted section 23 was eliminated therefrom. It must be concluded, therefore, that the removal of section 23 from Chapter X was designed to remedy this condition and to broaden the choice of forum of Chapter X trustees.

Indeed, further consideration of other provisions of Chapter X will make this amply clear. One of the prime differences between Chapter X and section 77B is the independent Chapter X trustee with his powers of investigation. One of the reasons why Congress created the office of the independent Chapter X trustee was to provide a method for the discovery of corporate abuse in the case of corporations in reorganization, to provide a machinery for the rectification of such abuse, and to permit the institution of actions to force restitution for any frauds or wrongs committed by the old management.[38] The Senate Committee on the Judiciary, in reporting on the bill which subsequently became Chapter X, stated[39] (in commenting on the purpose and effect of section 167, subd. 3 of the Chapter) that it "requires the trustee to report to the court any fraud, misconduct, mismanagement, or irregularities disclosed by his in-

[36] *Matter of Standard Gas & Electric Co.*, 119 Fed. (2) 658 (C. C. A. 3, 1931); *In re Prima Co.*, 98 F. (2) 952 (C. C. A. 7, 1938), cert. den., 305 U. S. 658; *cf. Thompson* v. *Terminal Shares*, 104 F. (2) 1 (C. C. A. 8, 1939), cert. den., 308 U. S. 559.

[37] See references cited in note 5 of the opinion of the Court below (R. 149).

[38] The reasons which impelled Congress to enact Chapter X are well stated by the Court below (R. 148).

[39] Report of Senate Committee on the Judiciary; Report #1916, 75th Congress, Third Session, p. 29. Elsewhere in this report the Committee refers to the fact that "In the proper administration of estates under section 77B it is necessary that the courts be provided with unbiased, impartial information as to the assets, liabilities, acts, conduct, and condition of a debtor corporation, the reasons for its insolvency, the qualifications of its management, the likelihood of reorganization, and the existence of causes of action which may add to the assets of the estate. * * * Section 77B is inadequate in all of these respects" (*id.*, p. 21). For the reasons thus set forth, section 167 was written into Chapter X.

vestigation, and insures prosecution of all causes of action: * * *"

Obviously, Congress intended that Chapter X should be something more than a mere administration of a corporation's estate; that it should be something more than the mere machinery for the formulation of a plan. Congress intended that Chapter X should provide a machinery for the investigation and discovery of management abuse and the institution of suits[40] to rectify those abuses.[41] In that view, the removal of section 23 from reorganizations under Chapter X indicates a direct Congressional purpose to enlarge the trustee's choice of forum[42] so as to effectuate the federal purposes of Chap-

[40] Reference to the provisions of Chapter X will disclose the error in petitioners' logic. The Chapter expressly confers upon a Chapter X trustee all the title, powers and duties of a trustee appointed under the first seven chapters of the Bankruptcy Act (sections 186, 187). One of those duties—and of course, a very important one—is the institution of suits for the recovery of assets. Moreover, sections 60, 67 and 70 specifically contemplate actions to set aside preferences and fraudulent transfers by Chapter X trustees. In addition, section 216 (subdivision 13) imposes on a Chapter X trustee the duty of enforcing "claims belonging to the debtor," as a part of the consummation of a reorganization. This assumes that a Chapter X trustee will institute suit. It is hardly believable that Congress would have, in sections 60, 67, 70 and 216 (subd. 13) referred to actions by Chapter X trustees to set aside preferences, fraudulent transfers and to enforce claims belonging to the estate if it considered that Chapter X were to be limited entirely to mere administration of a reorganization—*i. e.*, the formulation of a plan.

[41] We do not believe that petitioners really dispute the fact that a Chapter X trustee is authorized to bring an action for the rectification of corporate frauds; for they have at various times suggested that this action could be brought in the state courts. We pass for the moment the obvious logical dilemma in petitioners' reasoning which this creates. If Chapter X is merely an administrative proceeding, logically a Chapter X trustee should not be granted power to institute any kind of a suit at all—anywhere. The concession by petitioners that a Chapter X trustee can bring a suit as here involved in a state court should be considered as throwing some light on the fundamental validity of their argument.

[42] This is Professor Moore's view. He says that the "* * * elimination [of section 23] from reorganization proceedings makes it clear that plenary suits by trustee or receiver are maintainable

ter X and to provide the federal district courts as additional *fora*, since, "where resort is had to a federal court not on grounds of diversity of citizenship but because a federal right is claimed, the limitations upon the courts of a State do not control a federal court sitting in the State. *Holmberg* v. *Armbrecht*, 327 U. S. 392." (*Angel* v. *Bullington*, —— U. S. ——, No. 31 this Term, Feb. 17, 1947, Slip Sheet, p. 8. Cf. Respondents' brief as *amici* in *Holmberg* v. *Armbrecht*, 327 U. S. 392.)

II.

Bankruptcy Act, Section 115, as a Source of Jurisdiction.

Section 2 is not the only source in the Bankruptcy Act of jurisdiction in this case. We believe that jurisdiction may also be found in section 115 which grants to "the court * * * all the powers * * * which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor. * * *"

The question is not one of power—for Congress had the same power[43] as to all the district courts—but as to the scope of the jurisdiction conferred in section 115. Petitioners dispute only the scope of the jurisdiction conferred in this section. Their argument, simply stated, is that by the terms of the Act the grant is to a desig-

in the federal courts as ancillary to bankruptcy reorganization whether or not separate grounds for federal jurisdiction exist." (*Moore's Bankruptcy Manual* (1939), p. 494).

[43] *Schumacher* v. *Beeler*, 293 U. S. 367, 371 (1934); *Kelley* v. *Gill*, 245 U. S. 116, [illegible] (1917) ("* * * Whether the right to choose the court and the place in which the litigation shall proceed should be conferred upon the trustee or upon the defendant, is a legislative question with which Congress has dealt in the Bankruptcy Act * * *"); *Taubel, etc., Co.* v. *Fox*, 264 U. S. 426, 430 (1924) ("* * * Congress has, of course, power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. * * * Hence, even if the property is not within the possession of the bankruptcy court, Congress can confer upon it, as upon any other lower federal court, jurisdiction of the controversy, by conferring jurisdiction over the person in whose possession the property is * * *").

nated, single court: "the court in which the petition is filed"—a literality which recalls the disputes which we thought were laid at rest by *Lathrop* v. *Drake* and *Rabbitt* v. *Dutcher*.

Our argument is that the words "the court" are not to be viewed in a restrictive sense as designating only the court in which the petition for reorganization was filed. We believe that the words "the court" are to be read distributively and to refer to the Court of Bankruptcy which means every district court so far as it may have anything to do with the reorganization proceeding or with cases arising therefrom. This interpretation would agree with the intent of Congress to assimilate the equity receivership powers and jurisdiction into the Bankruptcy Court.

Admittedly, Congress desired to adopt only the good features of the receivership practice. The objections which had been leveled at the equity receiverships were in part concerned with the problems of ancillarity. Through the device of the Bankruptcy Court—all the district courts of the United States—Congress conferred a jurisdiction which was intended to destroy ancillarity with all its attendant evils. When Congress in Chapter X wrote "the court" it clearly meant the Bankruptcy Court, and it did not intend to have its language read narrowly, for that would merely re-create the evils which the Chapter had been designed to correct.

It will be recalled that section 1 of the Bankruptcy Act of 1867 granted jurisdiction to the various district courts "in their respective districts." And the argument was made under that statute that the words "in their respective districts" limited the jurisdiction of the district courts in bankruptcy matters so that only the district court in which the petition was filed, sitting as a Court of Bankruptcy, had any jurisdiction over that matter. That argument was answered by this Court in *Lathrop* v. *Drake* when it said that the words "in their respective districts" did not restrict the grant of jurisdiction to the court in which the proceeding pended, but conferred

jurisdiction on all district courts with respect to bankruptcy matters no matter where the estate was administered. Later the argument was made, under the 1898 Act, that a district court in New York could not issue any process in aid of a bankruptcy proceeding pending in another district. This Court, in *Babbitt* v. *Dutcher*, held that every district court had the necessary jurisdiction to aid in the effectuation of bankruptcy administration no matter where the original proceeding was pending. Subsequently Congress incorporated the rule of the *Babbitt* case in a subdivision of section 2.[44] Based on the reasoning of *Lathrop* v. *Drake* and *Babbitt* v. *Dutcher*, we believe that the grant of equity jurisdiction in section 115 is a grant to the Bankruptcy Court, which means every district court and is an analogue of the grant of section 1 in the Act of 1867 and of the grant of section 2 in the Act of 1898.

Reference to the old equity receivership cases (and it was the equity jurisdiction which was borrowed in 115) shows that a United States district court which appointed a receiver of the property of the corporation could, independently of diversity of citizenship of the parties, exercise jurisdiction of plenary suits arising out of the receivership proceeding to collect the assets of the estate. (*White* v. *Ewing*, 159 U. S. 36.) It must follow,—(if *Babbitt* v. *Dutcher* and *Lathrop* v. *Drake* correctly formulate a rule of distribution of jurisdiction not peculiar to the sections of the Act involved in those cases)—that the grant of equity jurisdiction in section 115 is a grant to every district court. This is the only sensible[45] interpretation of the grant in section 115. Otherwise, since the statutes as to venue and extent of process have not been interfered with, the jurisdiction granted in section 115 would be available only in the special case where the de-

[44] Now section 2(a) 20 of the Act.

[45] *Cf. U. S.* v. *Ryan*, 284 U. S. 164, 175 ("* * * all laws are to be given a sensible construction. A literal application of a statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose.")

fendants to be served resided within the territorial limits of the home court's jurisdiction.

In view of the widespread nature of corporate business—and Congress in Chapter X was dealing with corporations having a far-flung national business scope—it would indeed be peculiar for Congress to grant equity powers only to the home court. It is much more reasonable to believe that Congress undertook, in section 115, to extend the jurisdiction so as to render the Act effective for the purposes for which it was intended. This would require that section 115 be construed as a grant to every district court insofar as it was necessary to entertain suits in aid of the original reorganization because the defendants involved frequently reside beyond the home court's territorial jurisdiction.[46]

The construction which we suggest is neither novel nor unique. [Cf. *Collett* v. *Adams*, 249 U. S. 545 (1919); *Martex Realization Corp.* v. *Wolfson*, 143 Fed. (2) 360 (C. C. A. 2nd 1944).] Insofar as that construction re-

[46] The selection of the Virginia District Court as the one in which the petition for reorganization was to be filed was determined by the old management of the Debtor—the one with whom we have been litigating this controversy. They were permitted to choose the Virginia Court because the Debtor was incorporated in the State of Virginia. But the greater part of its work and major transactions were consummated outside of Virginia, and most of its business transactions were done in the City of New York, the financial center of the nation, because the Debtor was the top holding company of a pyramided series of holding companies which engaged in the business of financing huge ventures, the flotation of large security issues, and the organization of substantial corporations. Necessarily, most or all of the individuals connected with the old management of the Debtor would be residents of the New York district. Realistically viewed, the effectuation of the petitioners' contention would result in a holding that, at least with respect to this Debtor, the equity jurisdiction granted in Chapter X was abortive. For, as this Court well knows, it would have been futile to have filed the complaint in the Reorganization Court because its process could not have issued out of its district to reach the persons of these petitioners. Their argument on this score, therefore, would, if accepted, result in the grant of a sterile jurisdiction—a jurisdiction simultaneously nullified by the venue and process provisions of the Judicial Code.

quires the distribution of jurisdiction to all the district courts of the United States it may be supported by the express grant of power as to ancillary matters in section 2(20) of the Bankruptcy Act.

For example, in *Collett* v. *Adams*, 249 U. S. 545 (1919) an action was brought by a trustee in bankruptcy for an accounting and to set aside a voidable transfer of property located outside the territorial jurisdiction of the Court in which the petition was filed. In reversing a decree dismissing the suit for want of jurisdiction this Court said at page 549:

> "Sections 1(8) and 2 define 'courts of bankruptcy' as including the several District Courts of the United States, and § 2(20) invests the courts of bankruptcy with power to '*exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending* in any other court of bankruptcy.'
>
> "The amendments are couched in plain words and effect a material change in the jurisdiction of suits by trustees to avoid preferential transfers and recover the property or its value under § 60b. The exception engrafted on § 23b takes such suits out of the restrictive provisions of that section; the sentence added to § 60b makes them cognizable in the court of bankruptcy, as well as in such state courts as could have entertained them if bankruptcy had not intervened, and the new clause in § 2 dispels any doubt that otherwise might exist respecting the power of a court of bankruptcy other that the one in which the bankruptcy proceeding is pending to entertain such a suit where the property sought to be recovered is within its territorial limits."

The argument to the contrary depends upon a literal interpretation of the words "the court" which appear in

the various sections of Chapter X.[47] Section 111 grants exclusive jurisdiction of the debtor and its property, wherever located, to "the court in which a petition is filed." Sections 112 and 114 continue to refer to "the court", and section 115 then provides that "the court" shall have the equity powers "which a United States court would have if it had appointed a receiver in equity of the property of the debtor * * *"

The argument based on the words "the court" runs to the effect that by plain terms Congress has conferred this equity jurisdiction only on one designated court—which, for convenience, has been called the "home" or "domiciliary" court.

It is our view that such literality was not intended by Congress, which clearly meant to broaden, not to restrict, the choice of forum available to Chapter X trustees and to confer the equity powers in section 115 on any district court in which suit might be instituted.[48] Obvi-

---

[47] Thus petitioners, in their brief in support of certiorari have written (at p. 15): "The specific grant of jurisdiction applicable to Chapter X matters is found in section 114 * * * which restricts jurisdiction to the court where the petition is filed, or to the court to which the petition is transferred. Section 118. The definitions in the act of the court dispel all doubt on this point: Sections 1(9), 102." (See, also, their main Brief, p. 28.)

[48] Petitioners have insisted that the definition in section 1(9) requires the interpretation for which they contend. That definition provides that "court" shall be taken to mean "the judge or referee of the court of bankruptcy in which the proceedings are pending." But if this definition were substituted for "court" in section 115 it would result in the grant of jurisdiction to the judge when Congress obviously meant court, and would stultify the Congressional purpose. The argument is made possible only because of a change in wording in the definition of "court" as it appeared in the original act. In the Bankruptcy Act of 1898, the word "court" was defined as follows:

"Section 1(7) 'court' shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee;"

The present definition of "court" appears in section 1(9) of the Act. However, it is clear from the House Committee Report that no change *in substance* was made, since the Report states, as to this, that:

"* * * The proposed amendment is intended to make clear that

ously, therefore, if the Congressional purpose is to be achieved, section 115 should be given a sensible construction to effectuate that purpose. Such a construction requires that the words "the court" be construed to mean the Court of Bankruptcy,[19] which includes all the district courts of the United States, and not merely the court in which the petition is filed, or in which the proceeding is pending.

That this result is the one which Congress intended and expected, is made plain when we examine the provisions of section 21(a). As that statute appeared under the 1898 Act, it provided that "a court of bankruptcy" may require a person to appear "in court" for examination. When the question was presented whether the power to issue orders for examination was limited to "the court" in which the petition was filed, this court answered that such a limitation could not be read into

---

generally and not merely in special instances the functions of the bankruptcy court may be exercised by the referee" (H. R. Report No. 1409, 75th Congress, 1st Session (1937), at p. 5).

The same Report further states that this change was not one of substance from the original definition because,

"* * * the bill is not * * * a revision. It *does not change the existing system in any of its fundamentals*" (id., at p. 4; emphasis ours).

Since this change of wording was inadvertent, and not intended to produce the result for which petitioners contend, their argument should be tested against the old definition. When so tested we find that what petitioners are urging is the very argument this Court refused to accept in *Babbitt* v. *Dutcher*—that the jurisdiction granted in the act be confined to "the court" in which the petition had been filed.

[19] It will be noted that the petitioners' argument as to the restricted meaning which they claim must be given to the words "the court" loses sight of the general scheme of the Bankruptcy Act. Petitioners insist that for the content of "the court" reference must be had only to the definition section appearing in section 1(9) of the Act. This, it will be recalled, defines "court" as follows: "(9) 'court' shall mean the judge or referee of the court of bankruptcy in which the proceedings are pending". But this argument does not adequately explain what courts are courts of bankruptcy, since Chapter X only mentions "the court", and section 1(9) merely defines "the court" as the judge or referee of the court of bankruptcy in which the proceedings are pending.

the statute; and that every district court, and not merely the court in which the proceeding was pending, could issue orders for examination.[30]

In the 1938 revision, section 21(a) was recast so that it now reads "*the court* may * * * require any designated persons * * * to appear before *the court* * * * to be examined. * * *" If this statute is given a literal reading then it must follow that no court, other than the court in which the proceeding is pending, can issue examination orders. But Congress never intended such a result and clearly meant that the words "the court" in section 21(a) should be read as meaning "a court of bankruptcy". Since Congress has clearly stated that in making the 1938 revision it was not changing "the existing system in any of its fundamentals,"[31] it follows (because the same words "the court" likewise appear in Chapter X) that the same construction must be given to those words. To restate our argument: Congress has clearly indicated that the words "the court" in section 21(a) are identical with the words "a court of bankruptcy." Since the same words appear in Chapter X, they must be given the same interpretation.

If we refer further to the provisions of Chapter X, this will be made even more evident. This section 148 provides that under certain circumstances a proceeding may

---

To find what courts are vested with bankruptcy jurisdiction one must turn to section 2a which vests bankruptcy jurisdiction in the United States district courts as follows:

"The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and hereby invested within their territorial limits * * * with such jurisdiction (etc.). * * *"

The courts which were "hereinbefore defined as courts of bankruptcy" are the district courts of the United States (section 1(10)). Thus the only general statute which creates courts of bankruptcy—section 2a—confers all bankruptcy powers generally on all the United States district courts when passing on bankruptcy matters, no matter where the proceeding may be pending. (*Lathrop* v. *Drake*, 91 U. S. 516; *Babbitt* v. *Dutcher*, 216 U. S. 102.)

[30] *In re Elkus*, 216 U. S. 115 (1910).

[31] See note 6, *supra*.

be transferred to "a court of bankruptcy in any other district." Such "court of bankruptcy" (to which the proceeding was transferred) must then be deemed to have the equity powers granted in section 115, for otherwise we would have the absurd result that such powers are limited to "the court in which the petition is filed" even after the transfer has removed the proceeding from its jurisdiction. And since a "court of bankruptcy" is defined by section 1(10) to include all the district courts it must follow that after the transfer the powers conferred by section 115 on the Court in which the petition is filed are available to every district court. To restate the argument, section 118 defines the transferee court as a "court of bankruptcy" which—as we have shown—has the equity powers granted in section 118. Since a "court of bankruptcy" is defined in section 1(10) as including all the district courts, the equity jurisdiction contained in section 115 must then be available to every district court.

Thus we reach this result: after a proceeding has been transferred, the equity jurisdiction in section 115 may be exercised by any district court, but, before transfer, only by "the court" in which the petition is filed. Such an absurdity could not have been intended and is avoided if the words "the court" are, at the outset, held to mean "court of bankruptcy."

III.

The Judicial Code as a Source of Jurisdiction.

Thus far we have been discussing the jurisdiction which can be found in the Bankruptcy Act proper. That, however, is not the only source of jurisdiction of this suit in the district courts. Under section 24 of the Judicial Code jurisdiction is conferred on the district courts of suits by officers of the United States, suits arising under the laws of the United States, and of "matters and proceedings" in bankruptcy. If, therefore, plaintiffs are officers of the United States, or if the suit is one arising under the laws of the United States, or if it is

a matter or proceeding in bankruptcy, then the district court had jurisdiction. As we have already shown, the only statute which prevented the exercise of this jurisdiction was section 23 of the Bankruptcy Act. When that section was removed, as to Chapter X trustees (by section 102 of the Bankruptcy Act), the jurisdiction theretofore conferred in the Judicial Code became available to Chapter X trustees. We shall now discuss these separate grants of jurisdiction.

A.

Respondents Are Officers of the United States.

Section 24(1) of the Judicial Code grants jurisdiction to the district courts "of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue. * * *" This Court has held that a receiver of a national bank, appointed by the Comptroller of the Currency, is an officer within the meaning of Judicial Code, section 24(1) who can sue in the district courts without regard to diversity or amount in controversy.[32] We believe that respondents, being trustees in bankruptcy, bear the same relation to their estate that a receiver of a national bank bears to his estate.

No distinction exists between receivers of national banks and trustees in bankruptcy with respect to their capacity as officers of the United States. Receivers of national banks are appointed by the Comptroller of the Currency; trustees in bankruptcy are appointed by the federal courts. Both the Comptroller and the federal courts have authority granted them by Congress under the Constitution to appoint such officers. Both are authorized by law to sue; both perform functions which are essentially similar with respect to the estates which they represent. The reasoning which holds that a receiver of a national bank is an officer of the United States within the meaning of section 24(1) of the Judicial Code applies, therefore, to

[32] *Pufahl* v. *Estate of Parks*, 299 U. S. 217, 225 (1936).

a trustee in bankruptcy appointed pursuant to the provisions of Chapter X of the Bankruptcy Act.

The Bankruptcy Act defines "officer" as including a "trustee" [section 1(22)] and contains a fifth chapter entitled "OFFICERS, THEIR DUTIES AND COMPENSATION", in which chapter "the offices of referee and trustee are hereby created" (Bankruptcy Act, section 33). In the same chapter, the Act provides for the manner of appointment and qualifications of trustees (sections 44, 45), their duties (section 47), their compensation (section 48), and requires that a trustee before entering upon the performance of his official duties "shall qualify by entering into bond to the United States" in the manner therein provided (section 50). Trustees appointed pursuant to the provisions of Chapter X of the Bankruptcy Act are subject to similar provisions (sections 156, 186, 187).

Thus, the plaintiffs are by definition officers who are appointed by a "court of law" (the Bankruptcy Court) in which Congress has vested the power to make "the appointment of such * * * officers" (*Constitution, Art. 2, section 2, cl. 2*); trustees in bankruptcy, therefore, as such officers, would be entitled to maintain their suits in the district courts of the United States unless otherwise restricted or limited.[53]

Prior to the passage of Chapter X of the Bankruptcy Act, there was a restriction or limitation on the authority of a trustee in bankrupt[illegible] to bring his suit as officer of

---

[53] *Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, 642, 644, 645 (C. C. A. 6th, 1923); *Matter of Sievers*, 91 Fed. 366, 372 (E. D. Mo., 1899); *Bush* v. *Elliott*, 202 U. S. 477, 482, 483 (1906); *Spencer* v. *Duplan Silk Co.*, 191 U. S. 526, 531 (1903); is not to the contrary since it is section 23 of the Bankruptcy Act which, in 1903, required the statement that merely because plaintiff was a trustee in bankruptcy he did not have access to the federal courts. *Cf. Burbank* v. *Bigelow*, 92 U. S. 179, 181, 182 (1875); *Woolridge* v. *McKenna*, 8 Fed. 650, 676 (C. C. W. D. Tenn., 1881); "* * * These cases [referring to the *Spencer* case] all say this as a result of their consideration and application of the limitations of section 23, and they have no bearing upon the question we are considering, viz., whether there would be such jurisdiction if these limitations were absent. * * *". Denison, *C. J.*, in *Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, 644.

the United States in any district court. Section 23 of the Bankruptcy Act limited the authority of the trustee in bankruptcy as an officer of the United States by requiring that, with certain specific exceptions not here applicable, suits by such trustee must be brought in the district where the bankrupt could have sued unless the defendant consented. So long as section 23 of the Bankruptcy Act was in effect and applicable, the trustee in bankruptcy could not, on his authority as an officer of the United States, bring his suit in the district courts of the United States, except as so limited by section 23.

As indicated in the absence of the limiting provisions of section 23 of the Bankruptcy Act, the trustee in bankruptcy can sue in any district court by virtue of his authority as an officer of the United States. This limiting provision, *i. e.*, section 23, was removed from Chapter X proceedings by section 102 of the Bankruptcy Act, which specifically made section 23 inapplicable to Chapter X proceedings. As a necessary result the authority of a trustee in bankruptcy to sue in any district court of the United States, as an officer of the United States, was reinstated immediately upon the elimination of the limiting provision.

The result is that a trustee appointed under Chapter X of the Bankruptcy Act is an officer of the United States authorized by law to sue and may sue in the United States district courts without regard to diversity, or amount in controversy, and without the limitations imposed by section 23 of the Bankruptcy Act.

B.

Specific Jurisdiction Is Conferred in Judicial Code Section 24(19).

Section 24(19) of the Judicial Code is entitled "Suits and Proceedings in Bankruptcy" and confers original jurisdiction on the district courts of "all matters and proceedings in bankruptcy." In the Senate Report which accompanied the revision of the laws when section 24(19)

of the Judicial Code first took its present form, there appears the following commentary:[34]

> "This paragraph is merely declaratory of jurisdiction in the district courts of all matters and proceedings in bankruptcy, conferred by sections 2 and 23 of the Act of July 1, 1898 (2 Supp. 843) and is stated substantially in the language of paragraph 20 of §563."

Indisputably, Congress was here dealing with jurisdiction of ordinary civil suits, because it referred to section 23 of the Bankruptcy Act which we know deals with plenary jurisdiction and it entitled subdivision 19 as including "suits and proceedings in bankruptcy". Moreover, "proceedings" has been used by Congress as including ordinary civil actions.[35] Besides, the grant of plenary jurisdiction over civil actions in section 1 of the 1867 Act was with respect to "all matters and proceedings in bankruptcy"—the exact words used in this sub-section. It would appear therefore that section 24(19) of the Judicial Code grants to the district courts jurisdiction of plenary suits brought by a bankruptcy trustee.

This jurisdiction was limited by section 23 of the Bankruptcy Act. With the removal of that restriction (by section 102) the grant of jurisdiction in section 24(19) of the Judicial Code remains available to Chapter X trustees and the district court could have taken jurisdiction of the action under this section.

C.

The Action Is One Arising Under the Laws of the United States.

The remaining ground for jurisdiction urged in this case is that the suit is one which arises under the laws of the United States within the meaning of Judicial Code, section 24(1). The Constitution, in Article 3, Section 2,

---

[34] Senate Report #388, Part 1, 61st Congress, 2nd Session (1909-1910); Vol. 4 (Report on S 7031, "Revision of the Laws"). The quotation in the text is from page 16 of the Report.

[35] See discussion, *supra*, pp. 14 *et seq.*

provides that the judicial power of the United States shall extend to all cases "arising under * * * the Laws of the United States." Section 24(1) of the Judicial Code grants to the district courts jurisdiction "of all suits of a civil nature at common law or in equity * * * where the matter in controversy * * * arises under the * * * laws of the United States * * *", subject only to jurisdictional amount. It will, therefore, be seen from the language of section 24(1) that Congress has conferred all the jurisdiction within its power to confer (subject only to jurisdictional amount) on the district courts. The pertinent language of section 24(1) is identical with the Constitutional grant.

The only question here involved is, therefore, whether a suit by a trustee in bankruptcy is one arising under the laws of the United States.[36] If such a suit is one arising under the laws of the United States, then Congress has granted jurisdiction to the district courts in Judicial Code section 24(1) subject only to jurisdictional amount.

A lucid exposition of the reasoning which demonstrates that an action by a trustee in bankruptcy is one which arises under the laws of the United States will be found in *Toledo Fence & Post Co. v. Lucas*, 290 Fed. 637 (C. C. A. 6th, 1923). That case involved the "consent" jurisdiction of the district courts growing out of section 23(b) of the Bankruptcy Act, which, it was contended, could not be conferred by Congress. In refuting this argument, the Court reasoned that an action by a trustee in bankruptcy would be one "arising under the laws

[36] We have already demonstrated that a trustee in bankruptcy is an officer of the United States, having the same status as a receiver of a National Bank. This Court has said that for jurisdictional purposes such a receiver "is an officer of the United States, and an action against him is one arising under the laws of the United States * * *." *(Auten v. United States National Bank*, 174 U. S. 125, 141 (1899). "* * * He might have sued in a federal court * * * the receiver is an officer of the United States and, as such, entitled to sue for assessments in a federal court, irrespective of the citizenship of the parties or the amount in controversy. * * *" *(Putahl v. Estate of Parks*, 299 U. S. 217, 225 (1936).

of the United States, since the trustee would sue by virtue of a title created by the bankruptcy law. * * *. The suit is one step in the collection of assets in the execution of the bankruptcy act."

In *Schumacher* v. *Beeler*, this Court, in discussing the reasoning of *Toledo Fence & Post Co.* v. *Lyons*, said:

"* * * It proceeds upon the ground that the Congress had power to permit suits by trustees in bankruptcy in the federal courts against adverse claimants, regardless of diversity of citizenship. * * * We think that [this] * * * view is the correct one. * * *" (at p. 371).

The "view" of the *Toledo* case, which this Court was approving as "the correct one", was described by the same Circuit Court of Appeals which decided the *Toledo* case as follows: "* * * It was in that case [*i. e.*, the *Toledo* case] the view * * * of the court that except for * * * section [23] the federal court would have jurisdiction of all suits by a trustee to recover debts due the bankrupt, as being suits arising under the laws of the United States * * *" [*Beeler* v. *Schumacher*, 71 F. (2d) 831, 833 (C. C. A. 6th, 1934)][37].

It is clear, therefore, from the decisions of this Court that Congress has the power to grant to the district courts jurisdiction of such suits by trustees in bankruptcy on whatever terms Congress saw fit to impose.[38] If Congress has such power, it can only be derived from the Constitution, which means that it must be an action arising under the laws of the United States. This jurisdiction was in fact granted to the district court by Judicial Code section 24(1).

Petitioners have sought to avoid the jurisdiction thus established by relying on the test set forth in *Gully* v. *First National Bank*, 299 U. S. 109. In the *Gully* case

[37] *Cf. Williams* v. *Heard*, 140 U. S. 529, 535 (1891); *Dushane* v. *Beall*, 161 U. S. 513, 516 (1896); *Rector* v. *City Deposit Bank*, 200 U. S. 405, 411, 412 (1906).

[38] See authority cited in note 43, *supra*.

this Court held that an action to recover a debt, which resulted from a tax levied by the State of Mississippi on national banks, did not "arise under the laws of the United States" within the meaning of Judicial Code section 28 which permits removal[59] to the federal courts of actions "arising under the laws of the United States." Indeed, this Court said that any question of federal law which might have been involved in the *Gully* case was merely "lurking in the background" and was too remote[60] [*cf. Phillips* v. *United States*, 312 U. S. 246, 253 (1941)] to bring the case within the meaning of the phrase "cases arising under the laws of the United States."

---

[59] *See Colorado Bank* v. *Bedford*, 310 U. S. 41, 47 (1940).

[60] Obviously, an action by a trustee in bankruptcy does not suffer from such remoteness. *Cf. Hull* v. *Burr*, 234 U. S. 712, 720, 721 (1914). The inapplicability of the *Gully* case to actions by trustees in bankruptcy is demonstrated in *Toledo Fence & Post Co.* v. *Lyons*, 290 Fed. 637, at 643:

"We do not overlook that it was said by Chief Justice Fuller in *Western Union Co.* v. *Ann Arbor Co.*, 178 U. S. 239, 243, 20 Sup. Ct. 867, 869, (44 L. Ed. 1052), that——

'When a suit does not really and substantially involve a dispute or controvery as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit arising under the constitution or laws.'

"This has been often quoted or paraphrased, and it sometimes seems to have been thought to call for an actual disagreement between the parties as to the construction or effect of the federal law. Perhaps its broad language suggests that thought, but it cannot be so intended. The jurisdiction of the court cannot be ousted because the defendant concedes the original federal right and pleads only a discharge or other wholly nonfederal defense. A suit by a federal officer, or a national bank receiver, or a corporation of federal creation, may in truth involve no dispute whatever about any question of federal aspect; but the jurisdiction has never been for that reason doubted. The quoted phrase must be intended to apply not merely to cases where a dispute about the meaning or effect of the federal law has actually materialized, but also to cases where such dispute inherently lurks and must be tacitly passed over or decided before coming to the real quarrel. It has found chief application, early and late (*Shoshone* v. *Rutter*, 177 U. S. 505, 507, 20 Sup. Ct. 726, 44 L. Ed. 864; *Shulthis* v. *McDougal*, 225 U. S. 561, 569, 32 Sup. Ct. 704, 56 L. Ed. 1205), in cases where land

Moreover, the *Gully* case has set forth many tests[61] and it is not clear on which one petitioners rely, since they have quoted all the "tests". However, that is not important, for it is our view that the rule in the *Gully* case has no application here. Obviously, if Congress could have specifically granted jurisdiction to the district courts of actions by trustees in bankruptcy, it must be, as we have shown, because such suits do arise under the laws of the United States within the meaning of the Constitution. A suit brought by a trustee in bankruptcy under such a specific grant of jurisdiction could not be subject to any of the "tests" of the *Gully* case, because that would imply that the basis for the original grant of jurisdiction to the district courts was unconstitutional. Since this Court has at various times stated the exact opposite, it must follow that the *Gully* case does not apply to an action by a trustee in bankruptcy; otherwise, we have the result that on the one hand this Court has said that a suit by a trustee in bankruptcy does arise under the laws of the United States since Congress has the power to

---

titles originated under federal law; and it is there only another application of the rule of *Gableman* v. *Peoria, supra*, that a remote connection with federal law is not sufficient. The Supreme Court speaking by the same justice, in *Bankers' Co.* v. *Texas Pacific Railway, supra*, did not intend to overrule the principle which it had applied in *Shulthis* v. *McDougal, supra*; it did not perceive any inconsistency." Illustration, that an active dispute as to construction is not necessary is furnished by recent statutes, of which the Safety Appliance Act (Comp. St. §§ 8605-8623) and the Employers' Liability Act (Comp. St. §§ 8657-8665) are instances. The right of action depends in some measure on these statutes, but the parties may all agree as to the construction and effect of the law and may litigate only the amount of damages or the validity of a release; nevertheless, there is federal court jurisdiction."

[61] For example, one of these tests is that a construction of a federal law is involved. This must necessarily and logically imply that once the federal statute has been construed, the very next case involving the same statute would not present a question for interpretation so as to justify federal jurisdiction. *Cf. Hannis Distilling Co.* v. *Baltimore*, 216 U. S. 285, 288, 292, 294 (1910). But this would deny to Congress its constitutional power to grant jurisdiction to the district courts of, *e. g.*, actions by trustees in bankruptcy.

grant to the district courts jurisdiction of actions by trustees in bankruptcy, while on the other hand the *Gully* case purports to lay down tests which, if applicable, would defeat that jurisdiction.

We repeat, therefore, that the *Gully* case was not designed to apply to actions by trustees in bankruptcy. This is precisely what this Court has plainly indicated in *Pufahl* v. *Estate of Parks*, 299 U. S. 217, 225 (1936). That was an action by a receiver of a national bank to recover a stock assessment—a debt created by federal statute. In the vast majority of these cases the federal statute is never construed and exists simply to establish a basis for liability. The question for decision is entirely one of fact: Was the defendant a stockholder, or was he not? But if the test of the *Gully* case were applied such suits could never be brought in the federal courts. Nevertheless, this Court has plainly held that they may be brought in the district courts because the receiver of a national bank is an officer of the United States—and an action by an officer of the United States is one which arises under the laws of the United States. (The exact analogue of an action by a trustee.)

What we have, therefore, are situations where Congress could validly have conferred (and indeed did confer) jurisdiction on the federal courts of suits which it might be claimed do not meet the *Gully* test. What does this mean? Clearly, that the *Gully* test cannot and was not meant to be applied to actions by trustees in bankruptcy, to actions by officers of the United States, or to any other situation wherein Congress has specifically conferred jurisdiction on the district courts because such actions are indisputably actions "arising under the laws of the United States"; otherwise it would have been unconstitutional for Congress to have made the grant of jurisdiction in the first place. Therein lies the error in petitioners' reasoning. The *Gully* rule was meant to apply to cases (like *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505, 507) falling outside of the area of jurisdiction affecting suits by

trustees in bankruptcy, officers of the United States, or the other fields where Congress is constitutionally empowered to confer jurisdiction on the district courts of the United States.

CONCLUSION.

The Order and Judgment Below Should Be Affirmed.

Respectfully submitted,

CARL J. AUSTRIAN,
Attorney for Respondents.

ROBERT G. BUTCHER,
SAUL J. LANCE,
GEORGE H. SCHWARTZ,
ISADORE H. COHEN,
Of Counsel.

APPENDIX.

Statutes Involved.

Section 1 of the Bankruptcy Act of 1867:

"That the several district courts of the United States be, and they hereby are constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. * * *

"And the jurisdiction hereby conferred shall extend. * * *

"To the collection of all the assets of the bankrupt * * * and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy."

The BANKRUPTCY ACT OF 1898, as amended, provides:

Sec. 2a(7). "Creation of Courts of Bankruptcy and Their Jurisdiction.—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to——

* * *

"(7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, * * *".

SEC. 23. "Jurisdiction of United States and State Courts. a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

"b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act."

SEC. 101. "The provisions of this chapter shall apply exclusively to proceedings under this chapter."

SEC. 102. "The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however*, That section 23, subdivisions b and n of section 57, section 64, and subdivision f of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors,' and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a

petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered."

Sec. 111. "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Sec. 114. "Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication."

Sec. 115. "Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature."

The JUDICIAL CODE, as amended, provides:

Section 24(1) (in part):

"The district courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, * * * or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, * * *"

Section 24(19):

"The district courts shall have original jurisdiction as follows:

"Nineteenth. Suits and proceedings in bankruptcy. Of all matters and proceedings in bankruptcy."